

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Linda M. Ruivo

v.

Case No. 11-cv-466-PB

Wells Fargo Bank, N.A.

O R D E R

Linda Ruivo seeks a stay pending appeal of an order from this court dismissing her complaint. She asserts that such a stay will also stay any attempt by the defendant to foreclose on her property because a stay pending appeal would leave in place an earlier state court order granting her temporary relief from foreclosure.

Addressing Ruvio's second contention first, Ruvio is wrong in claiming that a stay of the court's ruling on the motion to dismiss would also stay any foreclosure on her property. The state court order she relies on expired by its own terms ten days after it was issued. She never sought to renew the order in this court and the order did not remain in effect simply because a hearing was never held on the order. Thus, the relief she seeks would not stay an anticipated foreclosure. To obtain

a stay of foreclosure, Ruvio thus must obtain injunctive relief pending appeal.

As the First Circuit has recognized,

[a] party requesting injunctive relief pending appeal bears the burden of showing that the circumstances of the case justify the exercise of the court's discretion. As in cases involving stays of action pending appeal, we are guided by consideration of four factors: (1) whether the applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent relief; (3) whether the issuance of relief will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Respect Maine PAC v McKee, 622 F.3d 13, 15 (2d Cir. 2010)

(citations omitted). Here, for the reasons set forth in my ruling granting the defendant's motion to dismiss, Ruvio has failed to make a strong showing that she is likely to succeed on the merits of her claim.

The Motion to Stay Judgment Pending Appeal (Doc. No. 36) is denied.

SO ORDERED.

/s/Paul Barbadoro
Paul Barbadoro
United States District Judge

March 6, 2013

cc: David H. Bownes, Esq.
David M. Bizar, Esq.